

STATE OF MICHIGAN
COURT OF APPEALS

THE BUCHANAN COMPANY,

Plaintiff-Appellant,

UNPUBLISHED
October 12, 2001

V

No. 221663
Oakland Circuit Court
LC No. 98-010805-CK

METHODE ELECTRONICS, INC., MERIT
(MALTA), LTD., METHODE ELECTRONICS
MALTA, LTD., and FIDDLER ASSOCIATES,
INC., d/b/a KILL & BOLTON ASSOCIATES,
INC.,

Defendants-Appellees.

Before: Collins, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendants pursuant to MCR 2.116(C)(10) on plaintiff's breach of contract, implied contract, tortious interference, and declaratory judgment claims.¹ We affirm.

This case arose out an agreement between plaintiff, a manufacturer's representative company, and defendant Merit (Malta), Ltd. ("Merit Malta"), a manufacturer of various automotive components, in which plaintiff agreed to attempt to find United States' markets for defendant Merit Malta's components in exchange for commissions on the components sold. Plaintiff's initial representation of defendant Merit Malta was based on an oral agreement. Following several years of representation, the parties reduced their agreement to a written contract, which included, *inter alia*, provisions for terminating the contract and the conditions under which commissions would be paid. Subsequently, defendant Merit Malta was purchased by defendant Methode Electronics, Inc. ("Methode Electronics"), and ultimately became Methode Electronics Malta, Inc. ("Methode Malta"). Shortly after the purchase of defendant

¹ Although the trial court did not specify the grounds upon which it granted summary disposition for defendants, the trial court referenced MCR 2.116(C)(10) when ruling on two of plaintiff's claims, and it is evident from the record that the trial court considered documentary proof beyond the pleadings in its ruling. Accordingly, we treat the motion as having been decided under MCR 2.116(C)(10). *Gibson v Neelis*, 227 Mich App 187, 190; 575 NW2d 313 (1997).

Merit Malta, defendant Methode Electronics notified plaintiff that it would be terminating the contract between plaintiff and defendant Merit Malta effective at the end of the calendar year. Following various correspondence between the parties, plaintiff filed suit against defendant Merit Malta, defendant Methode Electronics, defendant Methode Malta, and defendant Fiddler Associates, Inc., d/b/a Kill & Bolton Associates, Inc., another manufacturer's representative firm, against whom plaintiff alleged a claim of tortious interference.

Plaintiff first contends that the trial court improperly granted defendants' motion for summary disposition because a genuine issue of material fact existed concerning the termination provision of the contract. We disagree.

We review a trial court's grant or denial of a summary disposition motion de novo. *Spiek v Dep't of Transportation*, 456 Mich 331; 337; 572 NW2d 201 (1998). Summary disposition motions granted under MCR 2.116(C)(10) test the factual support for a claim. *Id.* To determine whether a genuine issue of material fact exists, the court must consider the affidavits, pleadings, depositions, admissions, and any other documentary evidence submitted in the light most favor to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). The interpretation of contractual language is a question of law which we also review de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

When contractual language is clear, the construction of the contract is a question of law for the trial court to decide, and the plain meaning of the language may not be impeached with extrinsic evidence. *Zurich Ins Co v CCR & Co (On Rehearing)*, 226 Mich App 599, 604; 576 NW2d 392 (1997). In this case, the language of the termination provision of the written contract clearly and unambiguously provided that the contract would be renewed annually unless terminated by giving notice before the turn of the new year. Thus, its construction was a question of law for the trial court to decide and extrinsic evidence was inadmissible to vary its terms. *Id.* As such, there was no genuine issue of material fact concerning the termination provision of the contract and the trial court properly granted summary disposition for defendants on this issue.

Plaintiff next maintains that the trial court improperly granted defendants' motion for summary disposition because a genuine issue of material fact existed concerning whether plaintiff was entitled to post-termination commissions. We disagree.

When a contract is silent on whether a broker or agent is entitled to receive post-termination commissions, an agent or broker is entitled to receive post-termination commissions where the agent or broker was the procuring cause of the sale. *Reed v Kurdziel*, 352 Mich 287, 294-295; 89 NW2d 479 (1958). Our Supreme Court explained:

In Michigan, as well as in most jurisdictions, the agent is entitled to recover his commission whether or not he has personally concluded and completed the sale, it being sufficient if his efforts were the procuring cause of the sale. In Michigan the rule goes further to provide if the authority of the agent has been cancelled by the principal, the agent would nevertheless be permitted to recover the commission if the agent was the procuring cause. [*Id.* (citations omitted).]

Although what constitutes a procuring cause is not defined with precision by Michigan case law, a procuring cause has been defined as the “chief means, by which [a] sale was finally effected.” *Kinsey v Barth*, 192 Mich 219, 223; 158 NW 872 (1916). Once an agent or broker demonstrates that he is the procuring cause of a sale, he may receive post-termination commissions where the customer’s accounts did not require further servicing or negotiation. *Roberts Associates, Inc v Blazer International Corp*, 741 F Supp 650, 655 (ED Mich, 1990).

In this case, the parties’ contract did not address the issue of post-termination commissions. Thus, plaintiff was entitled to post-termination commissions only if plaintiff was the procuring cause of the sale, *Reed, supra* at 294-295, and only if the accounts did not require further servicing or negotiation, *Roberts Associates, supra* at 655. Plaintiff was involved in procuring three accounts for defendant Merit Malta.² However, plaintiff admitted that the accounts it had handled for defendants required additional and continual servicing, and that plaintiff stopped servicing the accounts shortly after receiving notice that defendants were terminating the contract. As such, plaintiff was not entitled to post-termination commissions because plaintiff failed to demonstrate a genuine issue of material concerning whether it was the procuring cause of the accounts for which it sought post-termination commissions and whether the accounts required additional servicing following termination. Accordingly, the trial court properly granted summary disposition to defendants on this issue.

Plaintiff next argues that the trial court improperly dismissed its implied contract claim. We disagree. When the defendant receives a benefit from the plaintiff and the retention of the benefit by the defendant works injustice on the plaintiff, the defendant has been unjustly enriched. *Barber v SMH (US), Inc*, 202 Mich App 366, 375; 509 NW2d 791 (1993). Under such circumstances, “the law operates to imply a contract in order to prevent unjust enrichment.” *Id.* However, “a contract will be implied only if there is no express contract covering the same subject matter.” *Id.*

In this case, plaintiff admitted that it had stopped servicing the accounts it would have been entitled to commissions on shortly after receiving notice that defendants were terminating the contract. As such, defendants received no benefit from plaintiff following plaintiff’s termination and were not unjustly enriched at plaintiff’s expense. Moreover, the parties’ agreement was covered by an express contract and plaintiff does not have a cognizable implied contract claim. *Id.* Accordingly, the trial court properly granted summary disposition for defendants.

Plaintiff lastly contends that the trial court improperly dismissed its tortious interference and declaratory judgment claims. However, plaintiff’s entire argument on this issue consists of one paragraph with no citation to legal authority. A party may not simply “announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his

² Plaintiff admitted, however, that defendant Merit Malta was already doing business with one of these accounts when plaintiff began representing defendant Merit Malta and that one of defendant Merit Malta’s employees procured another of these accounts. Moreover, plaintiff admitted that there had not been much of a market for defendant Merit Malta’s products and that plaintiff’s commissions had been minimal.

claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.”” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, plaintiff has waived appellate review of this issue. *Wilson, supra* at 243; *Magee v Magee*, 218 Mich App 158, 161; 553 NW2d 363 (1996).

Affirmed.

/s/ Jeffrey G. Collins
/s/ William B. Murphy
/s/ Kathleen Jansen